

**CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE**

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DATE: February 11, 2009  
TO: Low Income Housing Tax Credit Stakeholders  
FROM: William J. Pavão, Executive Director  
SUBJECT: Proposed 2009 Regulation Changes: Responses to Comments Received

On December 10 and again on December 22, 2008 the California Tax Credit Allocation Committee (TCAC) released proposed regulation changes for program year 2009. TCAC staff subsequently held three public hearings on the following dates:

- Los Angeles, Monday, January 26, 2009
- Sacramento, Wednesday, January 28, 2009
- Oakland, Friday, January 30, 2009

In addition, TCAC took written public comment through January 4, 2009. Seventy (70) individuals and organizations formally commented on the initial proposed changes. TCAC staff has carefully considered all comments received, and has finalized the recommendations to Committee for consideration and adoption on Wednesday, February 25, 2009.

Between the two sets of proposals, staff proposed fifteen (15) substantive regulations changes. Pursuant to comments received, staff intends to recommend eight (8) of the substantive changes as originally proposed, and seven (7) with revisions.

Of the original twenty-one (21) clarifying changes proposed, staff intends to recommend nineteen (19) as originally proposed, and two (2) with additional clarifications.

Finally, staff is adding one (1) clarifying change to eliminate an overlooked remaining reference to Balanced Communities scoring.

The following is a list of those initially proposed changes that have been revised:

### **Substantive Regulation Changes Recommended with Revisions:**

1. Clarify that projects within DDAs and QCTs may seek state low income housing tax credits when seeking 9 percent federal credits. Delete archaic preference language. **Section 10317(d), page 5.**
2. Except existing project-based Section 8 projects from the scattered sites distance limitation. **Section 10325(c), page 10.**
3. Withdraw proposed leveraging scoring changes except clarifying language regarding how to calculate cost-efficiency, and eliminating the mandatory two-points for credit reduction. **Section 10325(c)(1), page 11.**
4. Clarify that the services minimum dollar amount for competitive purposes refers to value, not exclusively budgeted expenditures. The value of donated services would count toward the calculated minimum. Also, reduce competitive minimum value for small developments to \$5,000. **Section 10325(c)(5)(B), page 16.**
5. Add a one-point sustainable building methods option for developments in Qualified Census Tracts. **Section 10325(c)(8), page 19.**
6. Remove permanent financing commitment as a readiness scoring factor, and move to the final tiebreaker. Extend proposed 60-day readiness requirements out to 90-days. Narrow proposed Executive Director authority to extend the 150-day readiness deadline for 2008 projects only. **Section 10325(c)(10), page 23.**
7. Eliminate second tiebreaker altogether, and revise the final tiebreaker to measure the highest ratio of committed permanent financing to total project costs minus land (with one exception) and developer fee. **Section 10325(c)(12), page 25.**

### **Clarifying Regulation Changes Recommended with Revisions:**

1. Explicitly permit substituting in AHP construction period funding after application. **Section 10325(f)(8)(E) and F), page 28.**
2. Clarify that the minimum rehabilitation standard is the higher of the stated dollar minimum or the federally established percentage of adjusted basis. **Section 10325(f)(10), page 30, and 10326(g)(7), page 31.**

### **New Proposed Change in Response to Comments Received**

1. Delete remaining reference to Balanced Communities scoring that becomes archaic with the elimination of that scoring factor. **Section 10325(c)(5)(A), page 15.**

Attachment

**2009 Proposed Regulation Changes  
Responses to Comments  
February 11, 2009**

**Section 10302(p)**

**Initial Proposed Change:**

p) Farmworker Housing. A development of permanent housing exclusively for agricultural workers (as defined by California Labor Code Section 1140.4(b)) that is available to, and occupied by, only farmworkers and their households.

pg) Federally Subsidized. As defined by IRC Section 42(i)(2).

**Comments Received:** One comment asked that TCAC clearly publicize timelines for accessing credits for farmworker housing.

**Response:** Go forward with the proposed change, and publicize timelines at workshops.

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**Section 10302 (bb)**

**Initial Proposed Change:**

~~bb) Neighborhood Revitalization Area. An area, other than one in the Rural set aside, that is part of a neighborhood revitalization strategy area designated by the U.S. Department of Housing and Urban Development, an Empowerment Zone, Enterprise Community, Renewal Community, is part of an area designated by the California Department of Housing and Community Development as a State Enterprise Zone, or an area that has been designated by a local agency to be the focus of revitalization or similar efforts.~~

**Comments Received:** None received.

**Response:** Go forward with proposed change.

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**Section 10302(kk)**

**Initial Proposed Change:**

kk) State Credit. The Tax Credit for low-income rental housing provided by the Revenue and Taxation Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, including the State Farmworker Credit, formerly the Farmworker Housing Assistance Program provided by the Revenue and Taxation Code Sections 12206, 17058, and 23610.5 and by the Health and Safety Code Sections 50199.2 and 50199.7.

**Comments Received:** None received.

**Response:** Go forward with proposed change.

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**Section 10302 (nn)**

**Initial Proposed Change:**

nn) Threshold Basis Limit. The aggregate limit on amounts of unadjusted eligible basis allowed by the Committee for purposes of calculating Tax Credit amounts. These limits are published by CTCAC in its Application Supplement on its website, by unit size and project

location, and are based upon average development costs reported within CTCAC applications and certified development cost reports. CTCAC staff shall use new construction cost data from both 9 percent and 4 percent funded projects, and shall eliminate extreme outliers from the calculation of averages. Staff shall publicly disclose the standard deviation percentage used in establishing the limits, and shall provide a worksheet for applicant use. CTCAC staff shall establish the limits in a manner that seeks to avoid a precipitous reduction in the volume of 9 percent projects awarded credits from year to year. Local Development Impact Fees as defined in section 10302 of these regulations shall be excluded from this calculation if the fees are documented in the application submission by the entities charging such fee.

**Comments Received:** One commenter urged TCAC to alert program users if any information on TCAC's website changes.

**Response:** Go forward with proposed change, and highlight website changes on homepage and/or using list serve announcements.

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### **Section 10310(b)(2)(C) and (D)**

#### **Initial Proposed Change:**

- (2) Amount of State Tax Credits. The amount of State Tax Credits available for reservation in a reservation cycle shall be equal to:
- (A) the amount authorized by law for the year, less any amount set-aside for use with certain tax-exempt bond financed projects, plus the unused State Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
  - (B) the amount of State Credit Ceiling returned, and available, by the date that is thirty days following the application deadline for said cycle; plus,
  - (C) additional amounts of State Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations; and,
  - (D) five hundred thousand dollars (\$500,000) per calendar year in State Farmworker Credits to provide Farmworker Housing, plus any returned and unused State Farmworker Credit balance from the preceding calendar year.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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### **Section 10315(c)**

#### **Initial Proposed Change:**

- (c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. ~~Projects located in a census tract marked with an asterisk are subject to confirmation by RHS and approval by CTCAC as to their rural status.~~ All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless:

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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#### **Section 10315(d)**

##### **Initial Proposed Change:**

- (d) RHS program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available for new construction projects which have a funding commitments from RHS of at least \$1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, or RHS's Section 515 Rural Rental Housing Loan Program, ~~or RHS's Section 538 Guaranteed Rural Rental Housing Loan Programs~~, in the following priority order:
- First, to projects with RHS funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance for at least 50% of the project units (excluding non-restricted management units);
  - Second, to projects for which the Section 514, or 515, ~~or 538~~ funding commitment is an "obligation" (as that term is used by RHS);
  - Third, to projects for which the Section 514, or 515, ~~or 538~~ funding commitment is a "NOFA selection for further processing" but not an "obligation" (as those terms are used by RHS.)

Any amount reserved under this subsection for which RHS funding does not become available in the calendar year in which the reservation is made, or any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.

~~Beginning the second round of 2006, the presence of a Section 538 funding commitment alone will not enable a project to compete under the RHS program apportionment. Rather, such projects will compete under the general rural set-aside.~~

**Comments Received:** Two commenters urged TCAC to forgo the proposed revisions and return to considering RHS Section 538 loan guaranties as qualifying for the RHS program apportionment.

**Response:** The proposed change clarifies the policy decision made by TCAC in 2006, and does not substantively change the program from 2008. The policy reasons for the Committee's 2006 regulation changes are still valid, and this change simply deletes language left in place at that time to phase in the change during the second round of that year. Go forward with the proposed change.

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## Section 10315(i)

### Initial Proposed Change:

- (i) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable “additional threshold requirements” of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will attempt to fund Federal and State Credit awards in each funding round in the approximate following percentages:

<u>Housing Type</u>	<u>Goal</u>
Large Family	65%
Single Room Occupancy	10%
“At-Risk”	5%
Special Needs	5%
Seniors	15%

**Comments Received:** While receiving no comments on the specific proposed change, one commenter urged TCAC to revisit the housing type scoring scheme for a future deletion or revision.

**Response:** Go forward with proposed change.

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## Section 10315(k)

### Initial Proposed Change:

- (k) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after ~~the Supplemental Set-Aside has been deducted from the annual Credit Ceiling and the Set-Aside calculations for non-profit, rural, and special needs/SRO have been made~~ CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

**Comments Received:** While receiving comments supporting the change, TCAC also received comments objecting to set-asides generally, urging a geographic only award scheme. In addition, one commenter urged increasing the at-risk set aside to 10 percent (10%), and one commenter urged defining a project within 10 years of its tax credit regulatory agreement expiration as at-risk.

**Response:** The at-risk set-aside has experienced a pattern of under-subscription, so TCAC staff is not inclined to increase the set-aside at the additional expense of the geographic regions. State statute (Revenue and Taxation Code Section 12206(c)(3)(B)) establishes the five-year timeframe within which a tax credit regulatory agreement is set to expire for purposes of meeting the term “at risk of conversion.”

Staff recommends going forward with the proposed change.

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## Section 10317(b) and (c)

### Proposed Change:

- (b) Allocation of Federal Tax Credits required. State Tax Credit recipients shall have first been awarded Federal Tax Credits, or shall qualify for Tax Credits under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and the R & T Code Section 12206(b)(1)(A). State Farmworker Credits are exempt from this requirement.
- (c) Limit on Credit amount. The combined amount of Federal and State Tax Credits allocated to a building shall be limited to the lesser of the amount of State Credits pursuant to R & T Code Section 12206(c) plus the amount of Federal Tax Credits allocated under Section 42 computed on one hundred percent (100%) of the qualified basis of the building, or the amount sufficient for financial feasibility.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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## Section 10317(d)

### Initial Proposed Change:

- (d) Allocation Priorities. The Committee shall give ~~equal~~ priority when allocating State Tax Credits to applications proposing projects ~~with one or more of the following characteristics:~~
  - ~~(1) not eligible for the 130% basis adjustment, pursuant to IRC Section 42(d)(5)(C);~~  
Under authority contained in IRC Section 42(d)(5)(C)(v), for 2009 CTCAC additionally designates projects in the following counties as requiring an increase in credits and therefore considers such projects as being within a difficult to develop area (DDA) as that term is used in IRC Section 42(d)(5)(C)(iii): Alameda, Contra Costa, El Dorado, Napa, Placer, Sacramento, San Joaquin, and Sonoma.
  - ~~(2) HUD HOME program funds are a source of funds, and eligible basis is limited to the amount of unadjusted basis; or,~~
  - ~~(3) HUD HOME program funds are a source of funds and State Tax Credits are needed to satisfy HOME program fund match requirements. The local jurisdiction or Community Housing Development Organization shall provide an explanation why other sources are not available to provide matching funds.~~

**Comments Received:** Several commenters endorsed retaining the DDA status for the eight affected counties. Commenters also noted that this regulation provision permits applications for state credits in DDA counties and within Qualified Census Tracts (QCTs), but also noted the regulations lacked clarity as to such projects' "priority" status. Commenters suggested either clarifying how priorities are considered operationally, or doing away with the priority language altogether. Commenters also suggested including census tracts that meet the federal definition but for exceeding a federally-established maximum number of QCTs for the state.

**Response:** In light of the consistent under-subscription among 9 percent applicants seeking state tax credits, staff has not employed a priority system as referenced in the regulations. The existing "priorities" heading and "equal priority" language is unclear, and adds uncertainty for applicants seeking state credits with 9 percent federal credits.

Section 10317(g) prohibiting state credit awards to DDA/QCT-area 4 percent credit applicants is sound policy since those applicants can access additional federal credits that are not limited to the

state. Subject paragraph (d) permits DDA/QCT projects to receive State credits, so long as a boosted amount of federal credits are not taken, wisely preserving those limited federal credits for projects not also receiving state credits. However, the priority for non-DDA/QCT-area projects does not serve a clear public purpose in the context of an under-subscribed state credit. In the future, if state credits were to become over-subscribed, TCAC may institute a prioritization scheme, and should clearly state how that priority would operate relative to the competitive scoring system.

Adding additional QCTs beyond those proposed requires more study and impact evaluation.

#### **Revised Proposed Change:**

- ~~(d) Allocation Priorities. The Committee shall give equal priority when allocating State Tax Credits to applications proposing projects with one or more of the following characteristics:~~
- ~~(4) not eligible for the 130% basis adjustment, pursuant to IRC Section 42(d)(5)(C); HUD HOME program funds are a source of funds, and eligible basis is limited to the amount of unadjusted basis; or,~~
  - ~~(5) HUD HOME program funds are a source of funds and State Tax Credits are needed to satisfy HOME program fund match requirements. The local jurisdiction or Community Housing Development Organization shall provide an explanation why other sources are not available to provide matching funds.~~
- (d) DDA Status of Specified Counties for 2009: Under authority contained in IRC Section 42(d)(5)(B)(v), for 2009 CTCAC additionally designates projects in the following counties as requiring an increase in credit ceiling credits and therefore considers such projects as being within a difficult to develop area (DDA) as that term is used in IRC Section 42(d)(5)(B)(iii): Alameda, Contra Costa, El Dorado, Napa, Placer, Sacramento, San Joaquin, and Sonoma.
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#### **Section 10317(h)**

##### **Initial Proposed Change:**

- (h) State Farmworker Credit. Applicants may request State Tax Credits for eligible Farmworker Housing in combination with federal credits, or they may request State Farmworker Credits only. Applicants may apply only during competitive rounds as announced by CTCAC. If seeking a federal Credit Ceiling reservation along with State Tax Credits for eligible Farmworker Housing, applicants shall compete under the provisions of Section 10325(c) et. seq. If requesting State Tax Credits and federal credits for use with tax exempt bond financing, or State Farmworker Credits only, applicants shall compete under the provisions of Section 10317(i)(2). State Farmworker Credits shall be awarded as follows:
- (1) CTCAC shall award State Farmworker Credits to the highest scoring successful Farmworker Housing application requesting either (a) four percent (4%) federal credits in combination with State Tax Credits, or (b) State Farmworker Credits only.
  - (2) If State Farmworker Credits remain after awards made under paragraph (h)(1) above, then CTCAC shall award State Farmworker Credits to the highest scoring Farmworker Housing application requesting nine percent (9%) federal credits in combination with State Tax Credits.



- (3) If available State Farmworker Credits are inadequate to fully fund a pending request for eligible Farmworker Housing, CTCAC may reserve a forward commitment of subsequent year's State Farmworker Credits for that project alone.

~~(h)~~(i) Allocations. The following parameters apply:

- (1) An amount equal to fifteen percent (15%) of the annual State Tax Credit authority will be available for bond financed projects;
- (2) The project will be competitively scored under the system delineated in Section 10325(c)(2) through (5) and (8) through (12), except that the only tie breaker shall be the third tie-breaker enumerated at Section 10325(c)(12) of these regulations;
- (3) The highest scoring applications under this scoring system will be recommended for receipt of State Tax Credits, without regard to any set-asides or geographic areas, provided they meet the threshold requirements of Section 10326;
- (4) If the 15% set-aside has not been reserved prior to year end it may be used in a State Tax Credit exchange for projects that have received 9% Tax Credit reservations;
- (5) The Committee may reserve an amount in excess of the 15% set-aside of State Tax Credits for tax-exempt bond financed projects if State Credits remain available after funding of competitive projects in the second funding round.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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## **Section 10322(h)(20)**

### **Initial Proposed Change**

- (20) Utility allowance estimates. Current utility allowance estimates ~~in the form of a letter from the local public housing authority, verifying that the proposed project is located in its jurisdiction and that the utility allowance schedule provided is current (ref: IRS Final Regulations T.D. 8520), consistent with 26 CFR Section 1.42-10.~~ For buildings that are using an energy consumption model utility allowance estimate, the estimate shall be calculated using the most recent version of the California Utility Allowance Calculator (CUAC) developed by the California Energy Commission. The CUAC estimate shall be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Plans Examiner (CEPE) who is also either a California licensed Mechanical or Electrical Engineer, or a certified Home Energy Rating System (HERS) rater. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS Rater, in accordance with current HERS regulations. The applicant must indicate which components of the utility allowance schedule apply to the project.

**Comments Received:** Generally commenters supported the language permitting the CUAC as an acceptable energy consumption model. Commenters asked TCAC to clarify that other options, such as using a local public housing authority's utility allowance schedule would remain permissible. In addition, commenters recommended TCAC require a compliance certification from other regulating public entities when other methods are used (e.g., HUD or RHS); a periodic testing using actual usage data at projects; a process whereby residents could advise TCAC if they believe the allowance is inadequate; and a limit to the upward rent adjustments where a new

method reduces the utility allowance, especially where the local Area Median Income simultaneously rises by more than five percent (5%).

**Response:** Go forward with the recommended change, but take the additional suggestions under advisement for further consideration. While several suggestions appear to be sound public policy, TCAC staff requires more time to consider the administrative feasibility of such ideas. Staff will work closely with the California Energy Commission to explore periodic sampling for testing the CUAC's accuracy in estimating usage rates.

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## **Section 10322(i)(2) and (2)(Q)**

### **Initial Proposed Change:**

- (2) Placed-in-service application. ~~Upon completion of~~ Within one year of completing construction of the proposed project, the applicant shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs, must be explained by the applicant in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:
- (A) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Tax Credits are requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;
  - (B) an audited certification, prepared by a Certified Public Accountant under generally accepted accounting principles, with all disclosures and notes. This certification shall:
    - (1) reflect all costs, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan; and
    - (2) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.
  - (C) an itemized breakdown of placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date(s) on the certificate(s) of occupancy, a detailed explanation is required;
  - (D) photographs of the completed building(s);
  - (E) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;
  - (F) a certification from the syndicator of equity raised and syndication costs in a Committee-provided format;
  - (G) a project ownership profile on a Committee-provided form;
  - (H) a detailed description of the services currently provided to tenants including copies of contracts for such services. If services are not available at the time of submission, a description of the proposed services and a timetable for the provision of those services;
  - (I) a copy of any cost certification submitted to, required by and/or approved by RHS or any other lender;
  - (J) a list of all amenities provided at the project site, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided;
  - (K) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;

- (L) If applicable, a certification from a tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;
- (M) a certification from the owner that all of the minimum construction standards of Sections 10325(f)(7) and 10326(g)(6) have either been met or waived pursuant to these regulations;
- (N) if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;
- (O) a certification from the project architect that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws; and
- (P) a certification from the project architect that the sustainable building methods of section 10325 (c) (8) have been incorporated into the project, if applicable.
- (Q) a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(20) of these regulations. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS rater, in accordance with current HERS regulations.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

**Comments Received:** One commenter expressed concern in the event utility allowances have gone up at placed-in-service versus what was in effect at the time of application.

**Response:** While TCAC staff understands the commenter's concern, using out-of-date rates at final underwriting would not provide TCAC with an accurate description of the project's operating pro forma. A utility allowance must be updated by federal rule, and the alternative of using outdated estimates would provide an inaccurate estimate of a project's rental income and cash flow. Go forward with proposed change.

## Section 10322(i)(3)

### Initial Proposed Change

- (3) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:
  - (J) a chain of title report;
  - (K) a tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,
  - (L) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).

**Comments Received:** One commenter recommended a sponsor self-certification of compliance with the federal rule.

**Response:** TCAC staff requires a tax professional's opinion regarding a technical matter of federal tax law in order to assure compliance. Go forward with proposed change.

## Section 10322(i)(6)

### Initial Proposed Change:

- (6) Tenant relocation plan. Applicants proposing rehabilitation or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source, ~~and~~. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. ~~where~~ Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.

**Comments Received:** Commenters recommended specifically citing the California Relocation Assistance Act (CRAA) as the applicable standard for addressing anticipated displacement and relocation within a tax credit property. In addition, commenters urged TCAC to require a relocation budget, and funding sources, require that developers identify all applicable relocation requirements, and specifically state within regulation that aggrieved persons may enforce relocation requirements.

One commenter recommended leaving relocation oversight to local public funding sources, and increasing the five percent reference to 15 percent (15%).

**Response:** Existing language in paragraph 10322(i)(6) requires a detailed plan and “budget with an identified funding source.” The CRAA is commonly invoked in tax credit projects by virtue of local public funding, but is not clearly invoked by the State allocation of tax credits alone. The right of aggrieved persons to enforce relocation requirements requires further consideration.

While local public entities may be overseeing adherence to State and/or federal relocation law, the State has an independent interest in assuring that displacement is minimized and relocation efforts are made. Go forward with proposed change.

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## Section 10325(c)

### Initial Proposed Change:

- (c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project’s score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director’s satisfaction. An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle, shall be scored proportionately in the site amenities ~~neighborhood revitalization, and balanced communities categories~~ category based upon (i) each site’s score, and (ii) the percentage of units represented by each site. Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project’s points will be based solely on the current year’s scoring criteria and submissions, without respect to any prior year’s score for the same projects.

**Comments Received:** A commenter urged an exception to the geographic limitation where a pre-existing project-based Section 8 contract exists for the scattered site project. In such instance, TCAC should defer to the Section 8 contract terms and consider the scattered sites as a single project.

One commenter suggested that TCAC not regulate scattered site distances at all.

Response: TCAC staff agrees with the Section 8 exception suggestion, and recommend this accommodation. As stated in the initial statement of reasons, TCAC is compelled to regulate distances in light of recent abuse through extreme distances. A reasonable standard for considering scattered sites as a single rental project assures effective property management oversight of the units and related services. Go forward with the following revisions:

**Revised Proposed Change:**

- (c) Credit Ceiling application competitions. Applications received in a reservation cycle, and competing for Federal and/or State Tax Credits, shall be scored and ranked according to the below-described criteria, except as modified by Section 10317(g) of these regulations. The Committee shall reserve the right to determine, on a case by case basis, under the unique circumstances of each funding round, and in consideration of the relative scores and ranking of the proposed projects, that a project's score is too low to warrant a reservation of Tax Credits. All point selection categories shall be met in the application submission through a presentation of conclusive, documented evidence to the Executive Director's satisfaction. An application proposing a project located on multiple scattered sites, all within a five (5) mile diameter circle except where a pre-existing project-based Section 8 contract is in effect, shall be scored proportionately in the site amenities ~~neighborhood revitalization, and balanced communities categories~~ category based upon (i) each site's score, and (ii) the percentage of units represented by each site. Point scores shall be determined solely on the application as submitted, including any additional information submitted in compliance with these regulations. Further, a project's points will be based solely on the current year's scoring criteria and submissions, without respect to any prior year's score for the same projects.
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**Section 10325(c)(1)**

**Initial Proposed Change:**

- (1) Leveraging Maximum 30 Points
- (A) Cost efficiency. A project application for a new construction or an At-Risk development, or a substantial rehabilitation development where the hard costs of rehabilitation are at least \$40,000 per unit, whose total eligible basis is below the maximum permitted threshold basis limits after permitted adjustments, shall receive 1 point, up to a maximum of 15 points, for each percent by which its eligible basis is below the maximum permitted adjusted threshold basis limit. In calculating the eligible basis under this scoring factor, CTCAC shall use all project costs listed within the application unless those costs are not includable in basis under federal law as demonstrated by the application form itself or by a letter from the development team's tax professional.
- (B) Credit reduction. A project that reduces the amount of Tax Credits it is requesting shall receive 1 point for each percent that its qualified basis is reduced, up to a maximum of five (5) points. In order to receive points in this category, committed funds must be part of the permanent sources for the development and remain in place for at least ten years.

- (C) Public funds. For purposes of scoring, “public funds” include federal, state, or local government funds, including the outstanding principal balances of prior direct federal debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Land and building values must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(i)(4)(A). All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded, up to a maximum of 15 points.

To receive points under this subsection for loans, loans must be “soft” loans, having terms in excess of 15 years, and below market interest rates, interest accruals, residual receipts payments or other preferred terms for at least the first fifteen years of their terms. Points for donated or leased land shall be calculated based on the lesser of the purchase price or appraised value, except that points for land owned by the public entity for more than three years prior to the application filing deadline shall be calculated based on its appraised value. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. Similarly, if the principal balances of any prior publicly funded or subsidized loans are to be assumed in the course of a proposed acquisition, verification of approval of the loan assumption or other required procedure by the agency initially approving the subsidy will be needed to satisfy the commitment requirements.

~~A maximum of 20 points shall be available in combining the cost efficiency, credit reduction, and public funds categories. However, in order to score the full 20 points, at least 2 points must be achieved by each applicant in the credit reduction category.~~

**Comments Received:** This set of changes received a large number of comments expressing a variety of concerns regarding the proposed changes. Comments addressed the equitable measuring and scoring of cost-efficiency including the adequacy of TCAC’s basis limits as a measure of cost-reasonableness, the adequacy of TCAC’s basis limit increase provisions, the potential for cost manipulation for competitive advantage, and the challenge of comparing various housing types and locations when evaluating and scoring costs.

In addition, several commenters expressed concern about emphasizing public funding resources, including applicants’ inability to access public funding especially in communities lacking significant resources, and penalizing applicants capable of developing worthy projects without significant other public funding resources.

Many commenters also addressed the mechanics of these measures including how we could consider various resource contributions and cost features, and the affect over time on the program’s basis limits.

Several persons also commented in favor of the changes, or portions of the changes, and in favor of the principals behind the proposed changes. Comments supporting the principal of cost-effectiveness, for example were widespread, even among objectors to the specific proposed changes.

In the aggregate, comments in opposition to the changes greatly outweighed comments in support of the changes. A single exception were comments regarding the current requirement that at least two points must be earned through credit reduction in order to earn the full twenty (20) points. Several commenters urged eliminating the credit reduction option altogether.

**Response:** TCAC staff are withdrawing the recommended changes and, instead, are recommending the clarifying language regarding cost efficiency, and deleting the provision requiring that two of the 20 points must be earned through credit reduction. Staff will continue to work with stakeholders to determine if future changes to this scoring category are warranted.

**Revised Proposed Change:**

(1) Leveraging

- (A) Cost efficiency. A project application for a new construction or an At-Risk development, or a substantial rehabilitation development where the hard costs of rehabilitation are at least \$40,000 per unit, whose total eligible basis is below the maximum permitted threshold basis limits after permitted adjustments, shall receive 1 point for each percent by which its eligible basis is below the maximum permitted adjusted threshold basis limit. In calculating the eligible basis under this scoring factor, CTCAC shall use all project costs listed within the application unless those costs are not includable in basis under federal law as demonstrated by the application form itself or by a letter from the development team's tax professional.
- (B) Credit reduction. A project that reduces the amount of Tax Credits it is requesting shall receive 1 point for each percent that its qualified basis is reduced. In order to receive points in this category, committed funds must be part of the permanent sources for the development and remain in place for at least ten years.
- (C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior direct federal debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction, funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP), waivers resulting in quantifiable cost savings that are not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Land and building values must be supported by an independent, third party appraisal consistent with the guidelines in Section 10322(i)(4)(A). All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded. To receive points under this subsection for loans, loans must be "soft" loans, having terms in excess of 15 years, and below market interest rates, interest accruals, residual receipts payments or other preferred terms for at least the first fifteen years of their terms. Points for donated or leased land shall be calculated based on the lesser of the purchase price or appraised value, except that points for land owned by the public entity for more than three years prior to the application filing deadline shall be calculated based on its appraised value. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land. Similarly, if the principal balances of any prior publicly funded or subsidized loans are to be assumed in the course of a proposed acquisition, verification of approval of the loan assumption or other required

procedure by the agency initially approving the subsidy will be needed to satisfy the commitment requirements.

A maximum of 20 points shall be available in combining the cost efficiency, credit reduction, and public funds categories. ~~However, in order to score the full 20 points, at least 2 points must be achieved by each applicant in the credit reduction category.~~

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## **Section 10325(c)(3)(H)**

### **Initial Proposed Change:**

- (3) Negative points. Negative points, up to a total of 10 for each project and/or each violation, may be given at the Executive Director's discretion for general partners, co-developers, management agents, consultants, guarantors, or any member or agent of the Development Team as described in Section 10322(g)(5) for items including, but not limited to:
- (A) failure to utilize committed public subsidies identified in an application, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (B) failure to utilize Tax Credits within program time guidelines, including failure to meet the 150 day readiness requirements, unless it can be demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside of the applicant's control;
  - (C) failure to request Forms 8609 for new construction projects within one year from the date the last building in the project is placed-in-service, or for acquisition/rehabilitation projects, one year from the date on which the rehabilitation was completed;
  - (D) removal or withdrawal under threat of removal as general partner from a housing tax credit partnership;
  - (E) failure to provide physical amenities or services or any other item for which points were obtained (unless funding for a specific services program promised is no longer available);
  - (F) failure to correct serious noncompliance after notice and cure period within an existing housing tax credit project in California;
  - (G) repeated failure to submit required compliance documentation for a housing Tax Credit project located anywhere;
  - ~~(H)~~ failure to perform a tenant income recertification upon the first anniversary following the initial move-in certification for all one-hundred percent (100%) tax credit properties, or failure to conduct ongoing annual income certifications in properties with non-tax-credit units.
  - ~~(H)~~(I) material misrepresentation of any fact or requirement in an application;
  - ~~(I)~~(J) failure of a building to continuously meet the terms, conditions, and requirements received at its certification as being suitable for occupancy in compliance with state or local law, unless it is demonstrated to the satisfaction of the Executive Director that the circumstances were entirely outside the control of the owner;
  - ~~(J)~~(K) failure to submit a copy of the owner's completed 8609 showing the first year filing;
  - ~~(K)~~(L) failure to properly notify CTCAC and obtain prior approval of general or limited partner changes, transfer of a Tax Credit project, or allocation of the Federal or State Credit; or
  - ~~(L)~~(M) certification of site amenities, distances or service amenities that were, in the Executive Director's sole discretion, inaccurate or misleading.



**Comments Received:** One commenter recommended penalizing the offending property management company rather than the sponsor or general partner.

**Response:** Section 10325(c)(3) states that negative points may be given to “any member or agent of the Development Team.” Section 10322(h)(5)(f) explicitly lists “property management company” as being a member of a project’s Development Team. Therefore, the TCAC Executive Director could, at his or her discretion, assign points to the offending management company under the current regulatory language. Go forward with proposed change.

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## **Section 10325(c)(5)(A)**

### **Proposed Change:**

- |  |  |                   |
|--|--|-------------------|
| (5)  | Amenities beyond those required as additional thresholds<br>For site amenities and service amenities combined. | Maximum 25 points |
| <br>(A) Site Amenities: Site amenities must be appropriate to the tenant population served. To receive points the amenity must be in place at the time of application, <del>except under the Balanced Communities Subsection, where the funds for the amenity must be committed and the amenity is planned to be complete when the project is placed in service.</del> Distances must be measured using a standardized radius from the development site determined by the Committee but must not include physical barriers. No more than 15 points will be awarded in this category. Applicants must certify to the accuracy of their submissions and will be subject to negative points in the round in which an application is considered, as well as subsequent rounds, if the information submitted is found to be inaccurate. For each amenity, color photographs, a contact person and a contact telephone must be included in the application. The Committee may employ third parties to verify distances or may have staff verify them. Only one point award will be available in each of the subcategories (1-9) listed below. Amenities may include: |  |                   |

**Comments Received:** A commenter urged TCAC to delete this reference to Balanced Communities scoring in light of the proposed deletion of that scoring factor.

**Response:** Make complementary clean up change.

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## **Section 10325(c)(5)(A)(3)**

### **Proposed Change:**

- |    |  |          |
|----|--|----------|
| 3. | The site is within 1/4 mile of a <u>book-lending</u> public library <u>that also allows for inter-branch lending (when in a multi-branch system)</u> (1/2 mile for Rural set-aside projects) | 3 points |
|    | or within 1/2 mile (1 mile for Rural set-aside projects)   | 2 points |

**Comments Received:** One commenter recommending scoring local “private” libraries, while other commenters recommended reconsidering the entire set of site amenities receiving competitive points.

**Response:** The proposed change simply clarifies the current intent of the existing scoring for public libraries and TCAC staff recommends going forward with the proposed change. Staff will also confer with stakeholders for more substantive changes to site amenities scoring in the future.

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## Section 10325(c)(5)(B)

### Initial Proposed Change:

(B) Service Amenities: Amenities must be appropriate to the tenant population served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the project's placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenants free of charge, except for day care services. Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. Referral services will not be eligible for points. Contracts with service providers, ~~must be provided in the application, and service provider experience, and evidence that physical space will be provided, must be documented within the application, and a budget reflecting how the services will be paid for must be included in the application.~~ To receive points for services, the application must propose a combined annual expenditure of at least \$10,000 for those services. Any donated services must be assigned a dollar value by the provider of those services. To receive services points, applications must contain a detailed budget clearly displaying all anticipated income and expenses associated with the projects services program. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:

1. High speed internet service provided in each unit (as stated above, free of charge to the tenants) 5 points
2. After school programs of an ongoing nature for school age children 5 points
3. Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above. 5 points
4. Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development 5 points
5. Direct client services, such as assistance with activities of daily living, or provision of counseling services, where a contract is in place at the time of application (only for senior, SRO and Special Needs Projects) 5 points
6. Bona fide service coordinator/social worker available 5 points

**Comments Received:** Several commenters recommended scaling the services value minimum for project size. Specifically, these commenters expressed concern that establishing a minimum of \$10,000 annually for services in a small project would be excessive. One commenter recommended establishing a floor only for projects of 50 units or more, while one commenter recommended against establishing a floor altogether. Additional comments advocated a per unit minimum, such as \$125 per unit annually. Commenters also recommended clarifying that the dollar minimum would be for services in the aggregate, rather than per service, and that internet service costs would count toward meeting that minimum. One commenter recommended eliminating internet service from the service amenities scoring section.

**Response:** TCAC staff recognizes that the proposed wording created some confusion regarding the change's intent. The regulation change was meant to establish a minimum value to the services being proposed. Commenters noted that services are occasionally available to the project free-of-charge. TCAC intends to accommodate such arrangements by seeking an estimated dollar value for such services, which would count toward the dollar minimum. So, committed services worth \$15,000 annually, but donated by the provider would count toward meeting the requirement.

TCAC staff also sees the merit in the argument for scaling the floor by project size, especially for small projects. The proposed value floor is meant as an interim improvement over the existing absence of a minimum scoring standard, with more comprehensive changes to be considered for 2010. Therefore, TCAC staff recommends a lower standard of \$5,000 minimum value for small developments.

### **Revised Proposed Change:**

(B) Service Amenities: Amenities must be appropriate to the tenant population served and committed for a minimum of 10 years. Physical space for such amenities must be available when the development is placed-in-service, and the amenities must be available within 6 months of the project's placed-in-service date. To receive points in this category, programs must be of a regular, ongoing nature and provided to tenants free of charge, except for day care services. Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. Referral services will not be eligible for points. Contracts with service providers, ~~must be provided in the application, and~~ service provider experience, and evidence that physical space will be provided, must be documented within the application, and a budget reflecting how the services will be paid for must be included in the application. To receive points for service amenities the application must propose a combined annual value of at least \$10,000, or \$5,000 for projects of 20 units or fewer, for those services. Any donated services must be assigned a dollar value by the provider of those services. To receive service amenities points, applications must contain a detailed budget clearly displaying all anticipated income and expenses associated with the projects services program. Having a bona fide service coordinator (not the on-site manager, for example) may count for 5 points in this category, provided that the experience of the coordinator, the duties of the coordinator, and a budget to pay for the coordinator are included in the application. No more than 10 points will be awarded in this category. Amenities may include, but are not limited to:

1. High speed internet service provided in each unit (as stated above, free of charge to the tenants) 5 points
2. After school programs of an ongoing nature for school age children 5 points
3. Educational classes (such as ESL, computer training, etc.) but which are not the same as in 2 above. 5 points
4. Licensed child care providing 20 hours or more per week (Monday through Friday) to residents of the development 5 points
5. Direct client services, such as assistance with activities of daily living, or provision of counseling services, where a contract is in place at the time of application (only for senior, SRO and Special Needs Projects) 5 points
6. Bona fide service coordinator/social worker available 5 points

## Section 10325(c)(6) and (c)(7)

### Proposed Change:

- ~~(6) Neighborhood Revitalization. These points will not be available to projects applying under the Rural set-aside.~~

~~A development must be located in a Neighborhood Revitalization area, as defined in Section 10302(bb) of these regulations where demonstrable evidence, satisfactory to the Executive Director, is submitted showing that a neighborhood revitalization plan has been adopted and specific efforts towards achieving the plan's goals have occurred. Plans should be specific to the neighborhood, and efforts undertaken may include, but are not limited to, existing partnership coalitions with public entities, private sector enterprises, and/or nonprofit community organizations; financing commitments for work to be done in the neighborhood; and/or commencement of a specific neighborhood project. Each application for neighborhood revitalization points must include a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. Applications that have received HOPE awards from the U.S. Department of Housing and Urban Development, or located in federally designated Renewal Communities, Empowerment Zones, or Enterprise Communities, or are planned military base re-use projects, or are for projects located on tribal lands, or are located in a State Enterprise Zone will automatically be granted the full maximum points in this category without meeting any other conditions for Neighborhood Revitalization points. Base re-use, as used in this subsection, refers to projects that are located on a military base. Generally, such projects will involve, at least in part, the rehabilitation of already existing buildings on such a base. A project requesting neighborhood revitalization points will not be eligible to receive points in the balanced communities section below.~~

~~Points for neighborhood revitalization will be awarded as follows, to a maximum of~~

~~9 points:~~

~~Location in a locally designated revitalization area as evidenced by submission of a plan adopted by the jurisdiction, including evidence that the plan for neighborhood revitalization is still in effect, and a drawn-to-scale and scaled for distance map identifying the project and neighborhood revitalization efforts already undertaken as well as those planned. The plan should include findings of need or identification of problems requiring revitalization efforts.~~ 2 points

~~3rd party letters from governmental entities or from non-profit organizations, documenting and substantiating funds committed or expended within the past five years in the neighborhood, as they specifically relate to the revitalization of the neighborhood where the project will be located.~~ Up to 2 points

~~A narrative explaining precisely the nature and extent of the neighborhood's revitalization efforts, how the applicant's project will fit into that framework, and how the proposed project is critical to the neighborhood's revitalization.~~ 2 points

~~A letter from an official in the jurisdiction that delineates the various neighborhood revitalization efforts in the immediate vicinity of the proposed development, both already undertaken and planned, and the funds that have been committed and expended for projects within that immediate neighborhood.~~ Up to 3 points

- ~~(7) Balanced communities. These points will not be available to projects applying under the Rural set-aside.~~

~~If a development does not request neighborhood revitalization points, if the local government is providing funds equal to at least 5% of total project costs for the project, and if it meets the other requirements of this subsection, the applicant may request points for balanced communities. For purposes of this scoring factor, land donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline will be the equivalent of a local government providing funds. Points will be awarded, to a maximum of 9, as follows:~~

~~Submission of evidence from the local government that it has formally adopted initiatives to encourage the creation of affordable rental housing in new growth and/or high income areas and that the project is consistent with those locally adopted initiatives. Such initiatives may include inclusionary zoning ordinances and fair share requirements, as examples, but must include more than adoption of a housing element. 3 points~~

~~Evidence that the project will actually be built adjacent to housing owned and occupied by upper income families, to be shown by either the specific plan demonstrating the proximity of land uses and comparable sales data verifying that average sales prices for homes within a 1/2 mile radius of the site are above 100% of area sales prices, or census data demonstrating that the average income of that census tract is at or above 100% of area median. 2 points~~

~~The project will reserve at least 10% of its units for tenants with incomes not exceeding 30% of area median income. 2 points~~

~~The project will reserve at least 20% of its units for tenants with incomes not exceeding 30% of area median income. 3 points~~

~~The project will reserve at least 30% of its units for tenants with incomes not exceeding 30% of area median 4 points~~

**Comments Received:** Commenters supported this change, although two commenters recommended retaining these scoring sections. TCAC also received related comments under the proposed second-tiebreaker change, urging greater clarity as to how projects in Qualified Census Tracts would be scored. Also under the second tiebreaker a commenter urged a competitive advantage for projects within redevelopment areas.

One commenter recommended also deleting an additional clean-up reference to Balanced Communities scoring in Section 10325(c)(5)(A).

**Response:** Go forward with the proposed change.

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## **Initial Proposed Change**

### **Section 10235(c)(8)**

(8) Sustainable building methods. Maximum 8 points

A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. (4 points)

For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period. 2 points

Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems.

2 points

Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less).

1 point

Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit.

2 points

Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less).

1 point

Use of no-VOC interior paint (5 g/l or less).

1 point

Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less.

1 point

Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer.

2 points

Use of formaldehyde-free insulation.

1 point

Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%).

1 point

Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period.

1 point

Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas.

2 points

Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances.

1 point

The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous.

1 point

The project proposes to use Historic Tax Credits

1 point

To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.

Develop and commit to certifying the project any one of the following programs: Leadership in Energy & Environmental Design (LEED for Homes); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

**Comments Received:** Commenters supported adding a historic properties feature to the sustainable building methods scoring factor. Several commenters urged a larger scoring weight for historic properties by increasing the scoring category to 16 points and awarding eight (8) points for historic properties.

In addition, commenters recommended permitting a 30 percent basis boost for historic properties.

Finally, commenters expressed confusion over the proposed changes to the second tiebreaker (see Section 10325(c)(12) Initial Proposed Change below. One commenter recommended, as an alternative, complying with the federal mandate to competitively reward projects in Qualified Census Tracts (QCTs) by adding a one-point option under Sustainable Building Methods.

**Response:** The originally proposed change acknowledges the value of preserving historical properties within California communities, while not giving such properties an undue advantage over new construction projects that enlarge the available rental housing stock. One commenter noted several historic preservation projects that have successfully competed for Low Income Housing Tax Credits in the past, illustrating that meritorious historic projects are viable under the current scoring system. Go forward with the proposed change incorporating historical properties into the Sustainable Building Methods scoring factor.

Staff recommends the commenter's suggestion that QCT's be shown a preference by receiving one point under the Sustainable Building Methods scoring factor. Reinvesting in communities experiencing disinvestment and poverty reuses existing infrastructure and recycles developable sites. To receive a point, a QCT project applicant must demonstrate that the development would contribute to a concerted neighborhood revitalization plan. Additional language clarifies that a local government official letter is required, and outlines the minimum contents of the letter.

Finally, TCAC staff intends to comprehensively reevaluate the sustainable building category for possible changes in 2010.

### **Revised Proposed Change:**

- (8) Sustainable building methods. Maximum 8 points
- A new construction or adaptive reuse project that exceeds Title 24 energy standards by at least 10%. For a rehabilitation project not subject to Title 24, that reduces energy use on a per square foot basis by 25% as calculated using a methodology approved by the California Energy Commission. {4 points}-
- For rehabilitation projects not subject to Title 24 requirements, use of fluorescent light fixtures for at least 75% of light fixtures or comparable energy lighting for the project's total lighting (including community rooms and any common space) throughout the compliance period. 2 points
- Use of Energy Star rated ceiling fans in all bedrooms and living rooms; or use of a whole house fan; or use of an economizer cycle on mechanically cooled HVAC systems. 2 points
- Use of water-saving fixtures or flow restrictors in the kitchen (2gpm or less) and bathrooms (1.5 gpm or less). 1 point
- Use of at least one High Efficiency Toilet (1.3 gpf) or dual-flush toilet per unit. 2 points
- Use of material for all cabinets, countertops and shelving that is free of added formaldehyde or fully sealed on all six sides by laminates and/or a low-VOC primer or sealant (150 g/l or less). 1 point

- Use of no-VOC interior paint (5 g/l or less). 1 point
- Use of CRI Green-label, low-VOC carpeting and pad and low-VOC adhesives 25 g/l or less. 1 point
- Use of bathroom fans in all bathrooms that exhaust to the outdoors and are equipped with a humidistat sensor or timer. 2 points
- Use of formaldehyde-free insulation. 1 point
- Use of at least one of the following recycled materials at the designated levels: a) cast-in-place concrete (20% flyash); b) carpet (25%); c) road base, fill or landscape amendments (30%). 1 point
- Design the project to retain, infiltrate and/or treat on-site the first one-half inch of rainfall in a 24-hour period. 1 point
- Include in the project specifications a Construction Indoor Air Quality Management plan that requires the following: a) protection of construction materials from water damage during construction; b) capping of ducts during construction; c) cleaning of ducts upon completion of construction; and d) for rehabilitation projects, implementation of a dust control plan that prevents particulates from migrating into occupied areas. 2 points
- Project design incorporates the principles of Universal Design in at least half of the project's units by including: accessible routs of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances. 1 point
- The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. 1 point
- The project proposes to use Historic Tax Credits 1 point
- The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local governmental official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 1 point
- To receive these points, the applicant and the project architect or mechanical engineer must certify in the application, which of the items will be included in the project's design and specifications, and further must certify at the project's placed-in-service date that the items have been included and/or that the energy efficiency standard has been met or exceeded. Projects receiving points under this category that fail to meet the requirement will be subject to negative points under Section 10325(c)(3) above.
- Develop and commit to certifying the project any one of the following programs: Leadership in Energy & Environmental Design (LEED for Homes); Green Communities; or the GreenPoint Rated Multifamily Guidelines. 8 points

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## Section 10325(c)(10)

### Initial Proposed Change



~~(10)~~(8) Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 150 days of the Credit Reservation, as evidenced by submission, within that time, of recorded deeds of trust for all construction financing, except for AHP and MHP funds, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is involved, evidence must be submitted within 150 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred.

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 60 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet this timeline will result in rescission of the Tax Credit Reservation. The following must be delivered:

- (A) enforceable commitment for all construction and permanent financing, as evidenced by executed commitment(s) and payment of commitment fee(s);
- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA and NEPA) necessary to begin construction are either finally approved or unnecessary;
- (C) evidence of all necessary public approvals except building permits; and
- (D) evidence of design review approval.

For paragraphs (B), (C), and (D) an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that period were resolved within that 30-day period to garner local approval readiness points.

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 150-day requirements shall not apply to projects that do not obtain the maximum points in this category, for any items for which points are not awarded.

The Executive Director, at his or her sole discretion, may make a finding that a market-wide lack of investor equity or systemic credit market illiquidity warrants a general extension to the 150-day readiness deadline. The Executive Director may extend the deadline at any time for no more than an additional 90 days beyond the original deadline.

**Comments Received:** Stakeholders provided a variety of comments on the proposed changes to readiness scoring. Several commenters urged that TCAC not go forward with the proposed readiness changes at this time.

Commenters generally endorsed the proposed consideration for local approval appeal periods. One commenter suggested allowing 45 days to permit resolution of any appeals, while another urged clarity that NEPA and CEQA appeal periods are included in this forbearance.

Several commenters expressed concern over scoring permanent financing commitments within the readiness category, although fewer others stated that such commitments could be secured.

Several commenters also expressed concern that obtaining a letter of intent from an equity partner could be very difficult in the current economic climate, and others urged more time, either 75 or 90 days. These commenters argued that a 60-day deadline would place developers at a negotiating disadvantage with their equity partners.

A commenter stated that an executed partnership agreement by 150-days following reservation is too soon, while others urged a general increase to the existing 150-day standard or at least extending out a subset of the required actions. One commenter urged making the 150-day deadline 9 months following reservation.

Several commenters urged that TCAC not eliminate the construction loan closing exception for AHP, or allowing a substitution of AHP for another committed construction source if the developer secures an AHP award later.

Finally, commenters generally supported the Executive Director's authority to extend out the 150-day deadline under specified circumstances, but noted that the earlier allocation fee requirement would only affect first round awardees since second round recipients face a more near-term October 31 carryover allocation deadline, with full fee. Two commenters urged providing extensions if State MHP funding is unavailable due to a freeze on the Pooled Money Investment Account. One commenter stated that the extension provision seems to be at odds with the other proposed changes that would make readiness scoring more rigorous. Several commenters envisioned the Executive Director having and perhaps using this authority for 2009 recipients.

**Response:** TCAC staff continues to endorse the idea of assuring that applicants propose projects that can truly proceed on a timely basis. Accommodating expressed concerns without abandoning the general principal is reasonable.

Staff proposes lengthening the 60-day LOI and fee-payment requirement out to 90 days, understanding the 90-day payment would only affect first round applicants as a practical matter.

Accepting AHP construction financing after reservation should be permitted in light of the common timing of such awards, but AHP must be committed at TCAC application in order to receive readiness points.

TCAC staff agrees with commenters urging that permanent financing need not be committed to ensure readiness, but proposes a competitive reward for such commitments as a third tiebreaker (see revised proposed change to Section 10325(c)(12)).

Staff recommends retaining the originally proposed 30-day appeal period accommodation, a significant improvement over the current application deadline standard. This will also ensure timely application decision-making by TCAC.

In light of comments regarding the 150-day extension discretion for the executive director, staff is now proposing such accommodation be available only for 2008 second-round and waiting list reservation recipients. This change would permit an allowance for those project sponsors caught in the sharp market decline of 2008, while avoiding confusion regarding TCAC's readiness rigor for 2009 applicants.

### **Revised Proposed Change**

~~(40)(8)~~ Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 150 days of the Credit Reservation, as evidenced by submission, within that time, of recorded deeds of trust for all construction financing, except for AHP and MHP funds, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) and notice to proceed delivered to the contractor. If no construction lender is

involved, evidence must be submitted within 150 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred.

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet this timeline will result in rescission of the Tax Credit Reservation. The following must be delivered:

- (A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);
- (B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA and NEPA) necessary to begin construction are either finally approved or unnecessary;
- (E) evidence of all necessary public approvals except building permits; and
- (F) evidence of design review approval.

For paragraphs (B), (C), and (D) an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that period were resolved within that 30-day period to garner local approval readiness points.

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 150-day requirements shall not apply to projects that do not obtain the maximum points in this category, for any items for which points are not awarded.

The Executive Director, at his or her sole discretion, may make a finding that a market-wide lack of investor equity or systemic credit market illiquidity warrants a general extension to the 150-day readiness deadline for projects that still have 2008 reservations. The Executive Director may extend the deadline for no more than an additional 90 days beyond the original deadline.

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## **Section 10325(c)(12)**

### **Initial Proposed Change:**

#### **(12)(10) Tie Breakers**

If multiple applications receive the same score, the following tie breakers shall be employed: first, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; second, only if each of the tied score applications are within a qualified census tract (QCT), the application providing a local governmental letter describing how the project contributes to a concerted neighborhood revitalization plan; for other than Rural set-aside applications, to fund an application for a project located in a qualified census tract or a federally designated Renewal Community, Empowerment Zone, or Enterprise Community or State Enterprise Zone that has demonstrated that it will contribute to a concerted neighborhood revitalization plan, as evidenced by a score of at least eight (8) points, or a project not located in such an area that has received nine (9) points under section 10325(c)(6) or (7) of these regulations; third, the highest ratio of public funds, as described in Section 10325(c)(1)(C), to total project development costs. ~~the application with the lowest ratio of requested unadjusted eligible~~

~~basis to total residential project costs, excluding developer fee, total land cost, general partner/sponsor equity/loans or loans from the equity provider.~~ This ratio must not have increased decreased when the project is placed-in-service or negative points will be awarded, and the Tax Credit award may be reduced.

**Comments Received:** Many stakeholders commented in support of, and several others in opposition to the proposed tiebreakers revisions. Several commenters expressed confusion regarding the proposed second tiebreaker revisions, and one commenter suggested addressing the federal requirement by adding a one-point option for QCTs within the Sustainable Building Methods scoring factor. Commenters also urged that a QCT location should not be overly emphasized within the TCAC scoring scheme.

Many commenters endorsed the proposed third tiebreaker change as reducing application manipulation for competitive advantage, and as rewarding developers for aggressively seeking additional public resources. Commenter supported the contention that public funding sources bring additional public benefit by overseeing a project's development and ongoing operation over time.

Several commenters objected to the proposed third tiebreaker as competitively harming communities that lack financing resources to contribute. Also, several commenters noted that public funding has become increasingly difficult to obtain. Finally, commenters noted that otherwise viable projects would seek public funding sources only for competitive advantage, and public funding sources would be pressured to over-fund projects.

Many commenters suggested technical improvements to the proposal including taking land costs and developer fees out of the total project cost figure (the denominator), including charitable organization's commitments as public funds, and excluding land from the third tiebreaker ratio. One commenter urged that land donated by a public entity be valued at the higher of the public entity's purchase price or appraised value. Another commenter urged that private land donated under an inclusionary ordinance be valued at the restricted value since market rated developers are contributing devalued land by virtue of the mandated inclusionary performance. One commenter recommended including a inclusionary master developer's funding contribution as a public contribution for scoring purposes. Another commenter urged assuring that local public funding sources have committed funds on-hand at the time of application.

Some commenters recommended alternative tiebreakers including rewarding projects with the lowest land costs, using the application submittal date and time stamp as a prioritization, and reinstating a lottery. Some commenters recommended using unlimited amenities points scoring as the third tiebreaker, while other commenters opposed this idea.

Finally, several commenters expressed concern regarding the nondiscretionary negative point consequences and possible credit reduction for projects whose third tiebreaker ratio worsens at placed-in-service. Commenters argued that rising project costs are common and frequently outside of the sponsor's control. In addition, commenters stated that the pre-existing credit reduction consequence is not good public policy where costs increase or public funding decreases. Such a prospect inhibits attracting equity partners into the deal.

**Response:** While generally a reasonable measure of a project's likely success and viability, the proposed exclusive focus on public funding committed to a project also has some undesirable public outcomes. The systematic disadvantage for smaller communities lacking public funding resources would be a troubling outcome in light of the need in some such communities. In

addition, some projects may be strongly viable with a variety of non-public funding sources, along with tax credit equity.

Rewarding developers for aggressively seeking and bringing other funding sources into tax credit projects is good public policy. To this end, TCAC staff amends its proposed change to include private funding resources committed to the project. Specifically, the proposed ultimate tiebreaker will evaluate the extent to which permanent funding sources, either public or private, are committed to the project. Commitments shall be demonstrated by public entity award letters or private commitment letters.

TCAC staff is also withdrawing their second tiebreaker proposal. Instead, staff recommends eliminating the second tiebreaker altogether. Instead, QCTs will be rewarded with one point if the project would contribute to local community revitalization (see revised proposed change to Section 10325(c)(8) above). Therefore, the TCAC competition would have only two tiebreakers.

Finally, staff is modifying the consequences for a worsening second tiebreaker ratio at placed-in-service. New language will permit TCAC to assign negative points, allowing for a reasonable explanation for modest cost increases, for example. Since the ratio of permanent financing to costs would be a critical determinant in awarding credits, TCAC will take very seriously any reduction in the ratio. Developers are expected to use their professional judgment when estimating costs, and should be careful not to underestimate them. In part, developers size their construction contingencies on the risk of cost overruns and increases. TCAC will view cost increases beyond the contingency very dimly, unless those costs are paid for by additional public or institutional financing.

### **Revised Proposed Change:**

#### **-(12)/(10) Tie Breakers**

If multiple applications receive the same score, the following tie breakers shall be employed: first, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and second, for other than Rural set-aside applications, to fund an application for a project located in a qualified census tract or a federally designated Renewal Community, Empowerment Zone, or Enterprise Community or State Enterprise Zone that has demonstrated that it will contribute to a concerted neighborhood revitalization plan, as evidenced by a score of at least eight (8) points, or a project not located in such an area that has received nine (9) points under section 10325(c)(6) or (7) of these regulations; the highest ratio of committed permanent funds to total project development costs. Permanent funds shall be demonstrated through public funding award letters, or through commitments from unrelated private financial institutions or consortia of private financial institutions. For purposes of this tiebreaker, total development costs will not include land costs, unless land donated by a public entity is also being claimed as a permanent funding source. Total development costs for purposes of this tiebreaker shall also exclude budgeted developer fee. TCAC may establish underwriting parameters within its application for private funding sources to assure the reasonableness of the proposed loan amounts. ~~third, the application with the lowest ratio of requested unadjusted eligible basis to total residential project costs, excluding developer fee, total land cost, general partner/sponsor equity/loans or loans from the equity provider. This ratio must not have increased decreased when the project is placed-in-service or negative points will~~ may be awarded, and the Tax Credit award may be reduced.

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## Section 10325(d)(1)

### Initial Proposed Change:

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS program apportionment first), the Small Development set-aside, the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits reserved. No more than one project in a market area as determined by the Committee will be funded in the Rural set-aside during any calendar year. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. ~~Tax Credits reserved in the small development set-aside, and in the at-risk set-aside shall count within the geographic areas in which the projects funded therein are located.~~ Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.

**Comments Received:** TCAC received few comments regarding this change, but some commenters supported the change. One commenter urged that tax credits projects within 10 years of regulatory agreement expiration be considered at-risk. One commenter urged enlarging the at-risk set-aside while another opposed set-asides generally and urged TCAC to use geographic apportionments only.

**Response:** State statute establishes five-years as the applicable time horizon for tax credit projects being considered at-risk. TCAC lacks the administrative authority to redefine that term. Enlarging the at-risk set-aside is unwarranted in light of recent year's under-subscription for those funds. The rural and small development set-asides are established in state statute (although the two-percent small development set-aside is permitted, rather than mandated in statute) and, along with the regulation set-asides, constitute the State's funding priorities. Staff always welcomes comment regarding the array of non-statutory set-asides. At this time, staff recommends no change to the set-aside array, and will go forward with the proposed change.

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## Section 10325(f)(8)(E) and (F)

### Initial Proposed Change:

- (E) Substitution or an increase of such funds may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. Funds from a previously committed source may be increased only in an amount necessary to achieve project feasibility. Adding new funding sources to cover additional, unanticipated costs requires TCAC pre-approval. This

provision shall include projects that have already received a reservation or allocation of Tax Credits in prior years.

- (F) Funds anticipated but not yet awarded under the following programs shall be exempt from the provisions of this subsection: the Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; RHS Section 514, 515 or 538 programs; ~~California Housing Finance Agency's Proposition 1A school facility fee reimbursement program~~; the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's Mental Health Services Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction, or to projects receiving Housing Tax Credits in 1999 and thereafter and funding under the Department of Housing and Community Development's Multifamily Housing Program.

**Comments Received:** Several commenters urged that TCAC permit AHP funds to be added to a project subsequent to an application. This would allow sponsors to plan for other funding to pay for development costs, but use AHP in the event the sponsor successfully competes for those funds later. Readiness points would only be received for AHP funding if committed at the time of application.

Response: In light of the AHP funding timing and competitiveness, TCAC staff recommends permitting AHP to be substituted in following reservation.

**Revised Proposed Change:**

- (E) Substitution or an increase of such funds may be permitted only when the source of funding is similar to the original funding, for example, private loan to substitute for private loan, public funds for public funds. AHP funds may be substituted for any construction period funding source if an AHP commitment is obtained after the TCAC application due date. Funds from a previously committed source may be increased only in an amount necessary to achieve project feasibility. Adding new funding sources to cover additional, unanticipated costs requires TCAC pre-approval. This provision shall include projects that have already received a reservation or allocation of Tax Credits in prior years.
- (F) Funds anticipated but not yet awarded under the following programs shall be exempt from the provisions of this subsection: the Affordable Housing Program (AHP) provided pursuant to a program of the Federal Home Loan Bank; RHS Section 514, 515 or 538 programs; ~~California Housing Finance Agency's Proposition 1A school facility fee reimbursement program~~; the Department of Housing and Urban Development's Supportive Housing Program (SHP); the California Department of Mental Health's Mental Health Services Act Program; projects that have received a Reservation of HOME funds from the applicable Participating Jurisdiction, or to projects receiving Housing Tax Credits in 1999 and thereafter and funding under the Department of Housing and Community Development's Multifamily Housing Program.

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**Section 10325(f)(9)(D)**

**Initial Proposed Change:**

- (D) The maximum annual Federal Tax Credits available for award to any one project in any funding round shall not exceed ~~Two Million (\$2,000,000) Dollars, except for projects receiving a waiver of unit size under subsection (C) above, in which case the maximum annual Federal Tax Credits reserved to any one project in any one funding round shall not exceed~~ Two Million Five Hundred Thousand (\$2,500,000) Dollars.

**Comments Received:** Commenters supported this change. One commenter recommended putting an automatic annual escalator for this maximum within regulation.

**Response:** TCAC staff believes upward adjustments to maximum project awards should be carefully considered and proposed as needed. Understanding that larger per project awards could result in fewer 9 percent credit awards annually, TCAC should seek public comment when considering such an upward adjustment. Go forward with proposed change.

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#### **Section 10325(f)(10)**

##### **Initial Proposed Change:**

- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to complete a minimum of:
- (A) \$20,000 in hard construction costs per unit (except for those projects defined as “at risk” pursuant to these regulations, which must complete a minimum of \$10,000 in hard construction costs per unit-); and
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).

**Comments Received:** One commenter recommended clarifying that sponsors must meet the higher of the two federal tests A. and B.

**Response:** Staff has revised the language to more clearly state the federal test.

##### **Revised Proposed Change:**

- (10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to complete, at a minimum, the higher of:
- (A) \$20,000 in hard construction costs per unit (except for those projects defined as “at risk” pursuant to these regulations, which must complete a minimum of \$10,000 in hard construction costs per unit-); or
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).
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#### **Section 10326(c)(5)(C)**

##### **Initial Proposed Change:**

- (C) Additionally, for projects applying under Section 10326 of these regulations, an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project’s units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). An increase of two percent (2%) shall be available for every 1% of the project’s units that will be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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## Section 10326(g)(7)

### Initial Proposed Change

- (7) Projects involving rehabilitation of existing buildings shall be required to complete a minimum of:
- (A) \$10,000 in hard construction costs per unit; and
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).

**Comments Received:** One commenter recommended clarifying that sponsors must meet the higher of the two federal tests A. and B.

**Response:** Staff has revised the language to more clearly state the federal test.

### Revised Proposed Change:

- (7) Projects involving rehabilitation of existing buildings shall be required to complete at a minimum, the higher of:
- (A) \$10,000 in hard construction costs per unit; or
  - (B) 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).
- 

## Section 10327(c)(5)

### Initial Proposed Change:

- (5) Threshold Basis Limits. The Committee shall limit the unadjusted eligible basis amount, used for calculating the maximum amount of Tax Credits to amounts published ~~in its Application Supplement~~ on its website in effect at the time of application, and in accordance with the definition in Section 10302(nn) of these regulations. This limitation shall not apply for purposes of calculating the final Credit amount upon issuance of tax forms, including projects that have already received Reservation or allocations of Tax Credits.

**Comments Received:** One commenter recommended that TCAC alert stakeholders to changes on its website.

**Response:** Go forward with proposed change and alert users to updates.

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## Section 10327(g)(1)

### Initial Proposed Change:

- (1) Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published by the Committee staff annually. The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to TCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. ~~If the permanent lender(s) and equity investor are in place and present evidence to the Committee that they have agreed to lesser operating expenses, the operating expenses required by this subsection may be reduced by up to 15%.~~ The Executive Director may, in

his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting applications ~~submitted under Section 10326 of these regulations~~, when the ~~credit enhancer~~ equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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#### **Section 10328(d)**

##### **Initial Proposed Change:**

- (d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i)(2) or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted by October 31 of the year of the reservation, together with the applicable allocation fee, and all required documentation, except that the time for meeting the “10% test” and submitting related documentation, and owning the land, will be no later than ~~six (6)~~ twelve (12) months after the date of the carryover allocation.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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#### **Section 10328(e)**

##### **Initial Proposed Change:**

- (e) Placed-in-service. ~~Upon~~ Within one year following the project's completion of construction of the proposed project, the applicant shall submit documentation required by Section 10322(i)(2).

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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#### **Section 10330(c)**

##### **Initial Proposed Change:**

- (b) Timing. The appeal must be submitted in writing and received by the Committee no later than seven (7) calendar days following the transmittal date of the Committee staff's point or disqualification letter. The appeal shall identify specifically, based upon previously submitted application materials, the applicant's grounds for the appeal.
- ~~(c) Review. The initial appeal should be delivered to staff within five days after receipt of the scoring letter.~~ Staff will respond in writing to the appeal letter within 7 days after receipt of the appeal letter. If the applicant is not satisfied with the staff response, the applicant may appeal in writing to the Executive Director within ~~five~~ seven days after receipt of the staff response letter. The Executive Director will respond in writing no more than seven (7)

days after receipt of the appeal. If the applicant is not satisfied with the Executive Director's decision and wishes to appeal the Executive Director's decision, a final appeal may be submitted to the Committee no more than ~~five~~ seven days following the date of receipt of the Executive Director's letter. An appeal on any given project, when directed to the Executive Director or the Committee, must be accompanied by a one time, five hundred dollar (\$500) non-refundable fee payment payable by cashier's check to CTCAC. No appeals will be addressed without this payment. The appeal review shall be based upon the existing documentation submitted by the applicant when the application was filed.

**Comments Received:** No comments received.

**Response:** Go forward with proposed change.

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### **Section 10335(b)**

#### **Initial Proposed Change:**

- (b) Allocation fee. Every applicant who receives a reservation of Tax Credits, except tax-exempt bond project applicants, shall be required to pay an allocation fee equal to four percent (4%) of the dollar amount of the first year's Federal Credit amount reserved. Reservations of Tax Credits shall be conditioned upon the Committee's receipt of the required fee paid by cashier's check made payable to the Committee prior to execution of a carryover allocation or issuance of tax forms, whichever comes first. Preliminary reservation recipients receiving any competitive readiness points under Section 10325(c)(8) must pay one-half of the allocation fee within 60 days of the preliminary reservation, and the balance as described above. This fee is not refundable.

**Comments Received:** One commenter pointed out that this requirement only would affect first-round reservation recipients since second round recipients would pay their entire allocation fee on October 31, prior to the 60-day mark. Another commenter recommended making the allocation fee refundable if circumstances were beyond the developer's control.

**Response:** The allocation fee serves, in part, as earnest money for retaining a scarce credit ceiling reservation. Permitting a refund of this fee could work against the objective of assuring that developers are truly prepared to carry out the development with the credits. Go forward with proposed change.

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### **Section 10337(b)**

#### **Initial Proposed Change:**

- (b) Responsibility of owner – All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Project owners are required to annually certify tenant incomes in conformance with IRS regulation §1.42-5(c)(3) unless the project is a 100 percent (100%) tax credit property exempted under IRC Section 142(d)(3)(A). Owners of a 100% tax credit property must perform a first annual income recertification in addition to the required initial move-in certification. After initial move-in certification and first annual recertification, owners of 100% tax credit properties may discontinue obtaining income verifications. Owners of 100% tax credit properties must continue to check for full-time student status of all households during the entire tenancy of the households and throughout the initial compliance period, and continue recordkeeping in accordance with paragraph (1) of this subsection. These requirements continue if the tax credit property is

sold, transferred, or under new management. Any failure by the owner to respond to compliance reports, state agency required forms or certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.

**Comments Received:** Two commenters objected to a single recertification as too costly with very little public benefit in identifying initial qualification errors or inaccuracies.

**Response:** TCAC compliance monitoring staff notes that identifying initial certification errors or adjustments at the first annual recertification is not uncommon. Therefore a single recertification of each resident household upon their first anniversary of residency is warranted.

The elimination of 100 percent annual recertifications for 100 percent tax credit project should provide significant cost relief for project sponsors. Go forward with proposed change.

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### **Section 10337(b)(1)**

#### **Initial Proposed Change:**

- (1) Record keeping. The owner of a Credit project is required to keep records for each qualified low income building in the project for each year in the compliance period showing: the total number of residential rental units in the building (including the number of bedrooms, and unit size in square feet); the percentage of residential rental units in the building that are low-income units; the rent charged for each unit; (including a current utility allowance as specified in 26 CFR Section 142.10(c) and Section 10322(h)(20) of these regulations (for buildings using an energy consumption model utility allowance, that allowance must be calculated using the most recent version of the CUAC); the number of household members in each unit; notation of any vacant units; move-in dates for all units; tenant's (i.e., household) income; documentation to support each household's income certification; the eligible basis and qualified basis of the building at the end of the first year of the Credit period; and, the character and use of any nonresidential portion of the building included in the building's eligible basis.

**Comments Received:** Commenters endorsed the CUAC model, but one commenter urged requiring a compliance certification when other utility allowances are used. That same commenter urged a periodic sampling of actual usage to assure the utility allowance's accuracy, and a maximum rent increase percentage resulting from a utility allowance reduction. Another commenter recommended that TCAC clearly state that other utility allowance methods besides the CUAC may still be used.

**Response:** The citations within the subject paragraph refer program users to the alternative methodologies that may be used to establish a utility allowance. TCAC will work with the California Energy Commission to consider a utility usage sampling protocol for possible future regulation changes. The CUAC is unlikely to produce significant year-over-year utility allowance reductions that could place an undue burden on a project's low income residents. However, TCAC will attempt to monitor this over time and may regulate resulting rent increases if necessary. Go forward with proposed change.

**List of Commenters:**

1. Steve Armanino, Jamboree Housing Corporation
2. Joanne Auerbach, Placer County Redevelopment Agency
3. Jim Bonar, Clifford Beers Housing
4. Corinne Bartch,
5. Dixie Baus, CORE Affordable Housing, LLC
6. Evan Becker, California Housing Consortium
7. Michael Bodaken, President, National Housing Trust
8. Mike Buhler, Esq., Director of Advocacy, Los Angeles Conservancy
9. Debbie Burkhardt and Todd Fabian, Vice Presidents, NEF, Inc.
10. Chris Burns, KDF Communities, LLC
11. Frank Cardone, Chief Operating Officer, Related California
12. Wah Chen, Steven Eglash, Scott Ehrlich, and Scott Williams,, InSite Real Estate Development
13. Hart Comess-Daniels, Andrew Gross, and June Park, Thomas Safran and Associates
14. Ruby Dhillon, Global Premier Development
15. Kathleen Dreessen, Executive Director, Napa Valley Community Housing
16. Gwendy Egnator, Executive Director, Corporation for Better Housing
17. Tim Elliott, City of Los Angeles Housing Department
18. Don Falk, Tenderloin Neighborhood Development Corporation
19. Janet Falk, Vice President, Real Estate Development, Mercy Housing California
20. Karen Flock, Real Estate Development Director, Cabrillo Economic Development Corporation
21. Frank Fonseca and Cynthia Michaels, American Communities, LLC
22. Matthew O. Franklin and Nevada Merriman, Mid-Peninsula Housing Coalition
23. Carole Galante, Lydia Tan, and Jacques Pelham, BRIDGE Housing Corporation
24. Charles Gallow, Housing Consultant
25. Marc Gelman, CEO, Enhanced Affordable Development Co.
26. Jeffrey Gilbert, Polis Consulting Group
27. Edwin Gipson, II, Chief, Multifamily Programs, Community Redevelopment Agency of the City of Los Angeles
28. Jack A. Gold, San Francisco Architectural Heritage
29. Elva L. Grant, Executive Director, Housing Alternatives, Inc.
30. Alan Greenlee and Christina Hawkins, One Economy California

31. James R. Grow, Ilene Jacobs, Navneet Grewal, and Meliah Schultzman, National Housing Law Project
32. Julie Hattlin, Affirmed Housing Group
33. Cindy L. Heitzman, Executive Director, California Preservation Foundation
34. Rachael Iskow, Executive Director, Sacramento Mutual Housing
35. Stephanie Klasky-Gamer, President and CEO, L.A. Family Housing
36. William Leach, Director of Acquisitions, Palm Desert Development Company
37. Daniel Lopez, Interim Executive Director, California Housing Consortium
38. Albert Luu, RBC Capital Markets
39. Aaron Mandel, META Housing
40. Linda Mandolini, Executive Director, Eden Housing, Inc.
41. Mercedes Marquez, General Manager, Los Angeles Housing Department
42. Ajit Mithaiwala, Salim Karimi and Richard Alatorre, Advanced Development and Investment, Inc.
43. Mohannad Mohanna, Senior Vice President, MacFarlane Costa Housing Partners
44. Edgar Morales, Guaranteed Housing Specialist, USDA Rural Development
45. Julie Mungai, Vice President Acquisitions, Community CORE Renaissance
46. Mary Murtagh, Executive Director, EAH
47. Stephen M. Palz, Executive Director, Housing Authority of the County of Kern
48. Steven G. Pasarow, Redevelopment Manager, City of San Jacinto
49. Kevin Payne, Payne Development
50. Holly Phillips, Housing Development, Abode Communities
51. Caleb Roope, President/CEO, Pacific West Communities
52. Joel Rubenzahl, Community Economics, Inc.
53. Patrick Sabelhaus, California Housing Consortium
54. Kenneth L. Sauder, President/CEO, Wakeland Housing and Development Corp.
55. Tom Scott, Executive Director, San Diego Housing Federation
56. Gwendy Silver-Egnator, Executive Director, Corporation for Better Housing
57. Jim Silverwood, President, Affirmed Housing Group
58. Vicki Simpson, Vice President, Property Management
59. Julie Snyder, Policy Director, Housing California
60. Diane J. Spaulding, Executive Director, Non-Profit Housing Association of Northern California

61. Keith S. Stanley, Housing Development Consulting, LLC
62. Nick Stewart, Burbank Housing
63. William E. Szymczak, Manager, Preservation Partners Development
64. Catherine Talbot, Managing Director, Acquisitions, MMA Financial, Inc.
65. Dana Trujillo, Abode Communities
66. Brian R. Turner, Esq., Law Fellow, National Trust for Historic Preservation
67. Bradley W. Wells, Senior Vice President, Urban Housing Communities
68. Rob Wiener, Executive Director, California Coalition for Rural Housing
69. David Yarden, Vice President – Director of Tax Credit Programs, AMCAL
70. Paul Zimmerman, Executive Director, Southern California Association of NonProfit Housing